Editor's note: appealed - closed by stipulation, Civ.No. 81-293 (E.D.Cal. July 13, 1982)

UNITED STATES
v.
GRAHAM R. CORNS

IBLA 80-966 Decided February 26, 1981

Appeal from decision of Administrative Law Judge R. M. Steiner declaring placer mining claim null and void. CA 4789.

Affirmed.

1. Administrative Procedure: Adjudication -- Administrative Procedure: Administrative Review -- Administrative Procedure: Decisions -- Appeals

   It is not necessary to make a separate ruling on each finding of fact and conclusion of law proposed by the parties to an administrative proceeding. It is sufficient if the decision summarizes the controlling principles of law and the facts relative thereto as established by the evidence adduced.

2. Administrative Procedure: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Discovery: Generally

   When the Government contests a mining claim on a charge of no discovery of a valuable mineral deposit it assumes the burden of going forward with sufficient evidence to establish a prima facie case; when it has done so, the burden shifts to the claimant to show by a preponderance of the evidence that a discovery has been made and still exists within the limits of the claim.

3. Mining Claims: Discovery: Generally

Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit, i.e., a valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit.

4. Contests and Protests: Generally -- Mining Claims: Contests -- Rules of Practice: Government Contests

A sufficient prima facie case by the Government does not require positive proof that there has been no discovery made or that the mining claim is nonmineral in character. Upon the Government's presentation of a prima facie case, the burden shifts to the claimant to prove by a preponderance of the evidence that he indeed has effected a discovery of a valuable mineral deposit within the limits of the claim.

5. Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally -- Mining Claims: Mineral Lands

Land is mineral in character when known conditions engender the belief that the land contains mineral of such quantity and quality as to render its extraction profitable and justify expenditures to that end. The charge that the land embraced by a mining claim is not mineral in character is a normal adjunct to a charge of no discovery.

APPEARANCES: William B. Murray, Esq., Portland, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This appeal is taken from a decision by Administrative Law Judge R. M. Steiner, declaring appellant's Robert Clair placer mining claim invalid.

In January 1980 the Bureau of Land Management on behalf of the Forest Service, Department of Agriculture, issued complaints charging that the land upon which the claim was located is nonmineral in character, that there was no discovery of valuable minerals of a variety subject to the mining laws presently disclosed on the claim, and that the claim is not held in good faith for mining purposes. The claimant denied the charges and the matter came on for hearing.

Hearings were held on September 12 and 13, 1978, and October 25 and 26, 1979, in Sacramento, California. On August 20, 1980, Judge Steiner issued his decision holding the claim invalid. The Judge's decision sets out the pertinent evidence, the applicable law and his analysis and conclusion. We are in agreement with the decision and adopt it as the decision of this Board. A copy of it is attached.

Appellant's statement of reasons submitted to the Board is a duplicate of its posthearing brief filed with Judge Steiner prior to his decision. Consequently, it contains no assignments of error to the Judge's decision. Nevertheless, we will briefly review the major contentions made therein.

[1] Appellant argues essentially that the Government failed to make a prima facie case of no discovery in that the mineral examiner was haphazard in evaluating the claim. Appellant also asserts that there was insufficient proof that the land was nonmineral in character. Appellant contends further that on September 28, 1978, he made a discovery of "some small nuggets and black sand containing visible gold flakes and some flakes of platinum" (S/R p. 28). Appellant has appended to his statement of reasons a tabulation of 42 "requested findings" he wishes the Board to adopt. We conclude that the pertinent findings are accurately set forth and evaluated in light of applicable law in the Judge's decision. Thus, there is no need for a ruling on each proposed finding listed by appellant. United States v. Jon Zimmers, 44 IBLA 142 (1979). United States v. Shield, 17 IBLA 91 (1974).

[2, 3, 4] The Judge's concise evaluation of the evidence on the issue of discovery correctly reflects that the contestant established a prima facie case of no discovery and that the evidence of the claimant was insufficient to show more than that further explanation might be warranted. United States v. Knox-Arizona Corp., 44 IBLA 297 (1979). On pages 5-6 of his decision Judge Steiner exhaustively tabulates the claimant's own evidence on this issue. That evidence was meager at best, and, therefore, insufficient to overcome the Government's prima facie showing. Moreover, even if the prima facie showing by the Government falls short of positive proof that the land is nonmineral in character or that no discovery exists, the burden of demonstrating a valuable discovery by a preponderance of the evidence rests upon the claimant. Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979); United States v. Syndbad, 42 IBLA 313 (1979). Appellant has not met this burden.

[5] It is well established that the sine qua non for a valid mining claim located on public land is discovery of a valuable mineral deposit within the limits of the claim. A discovery of valuable minerals under the Federal mining laws exists only where the minerals found are of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. United States v. Coleman, 390 U.S. 599 (1968); Chrisman v. Miller, 197 U.S. 313 (1905); Castle v. Womble, 19 L.D. 455, 457 (1894). The charge that the land embraced by a mining claim is not mineral in character is the normal adjunct to a charge of no discovery. Land is mineral in character only when known conditions engender the belief that it contains minerals of such quality and quantity as to render its extraction profitable and justify expenditures to that end. United States v. W. G. Nickol, 47 IBLA 183 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed and adopted.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

August 20, 1980

United State of America	:	Contest No. CA-4789
	:	
Contestant	:	Involving the Robert
	:	Clair Placer Mining Claim,
Graham J. Corns	:	situated in the N 1/2 Sec.
	:	13, T. 1 S., R. 7 E.,
Contestee	:	Humboldt Meridian,
	:	Trinity County, California

DECISION

Appearances: Charles F. Lawrence, Esq.,
Office of the General Counsel,
U. S. Department of Agriculture,
San Francisco, California,
For the Contestant.

William B. Murray, Esq.,
Portland, Oregon,
For the Contestee.

Before: Administrative Law Judge Steiner

This is an action brought by the Bureau of Land Management on behalf of the United States Forest Service (USFS) pursuant to the Hearings and Appeals Procedures of the Department of the Interior, 43 CFR Part 4, to determine the validity of the above-named placer mining claim.

The Contestant filed a Complaint herein on January 6, 1978, which was subsequently amended on January 12, 1978, alleging, inter alia, as follows:

A. There are not presently disclosed within the boundaries of the mining claim minerals of a variety subject to the mining laws, sufficient in quantity, quality, and value to constitute a discovery.

B. The land embraced within the claim is non-mineral in character.

C. The claim is not held in good faith for mining purposes.

The Contestee filed a timely Answer generally denying the foregoing allegations of the Complaint, and alleging that a valid discovery had been made on the Robert Clair placer mining claim.

Thereafter, hearings were conducted on September 12 and 13, 1978 and October 25 and 26, 1979 in Sacramento, California.

Mr. Emmett B. Ball, Jr., after having been duly qualified as a mining engineer, testified on behalf of the United States Forest Service. On his first examination of the Robert Clair placer claim made in October, 1975, he took several photos and a sample from the claim. (Tr. 18). The sample was taken from a small cut near Cave Creek and panned down. No metallics were found although some black sand was recovered. (Tr. 18). A cabin and what appeared to be a marijuana garden was on the claim. (Tr. 19, Ex. 10 and 14). Very little evidence of mining or mining equipment was found. Another inspection was made in September, 1976. During this inspection Mr. Jeff Clark showed Mr. Ball a miniature sluice box near the cabin. (Tr. 20). Several sampling points along Cave Creek were pointed out by Mr. Clark. After taking samples from these points and panning them down, Mr. Ball was unable to detect any metallics in the concentrate. (Tr. 21). A limited amount of gravel is deposited along Cave Creek. (Tr 22).

According to a location notice for the Robert Clair Placer Claim filed by Ray G. Goodman, (Ex. 2) the claim embraces land along Cave Creek but ends just short of the confluence of Cave Creek and the South Fork of the Trinity River. (Ex. 4, Tr. 23). It was his opinion, based on his examinations, that a prudent man would not be justified in developing the claim.

Photos revealed that Cave Creek is strewn with boulders and exposed bedrock, devoid of significant amounts of gravel. (Ex. 7 and 8). Mr. Ball estimated there may be a thousand yards of gravel in Cave Creek. (Tr. 28).

On cross-examination, Mr. Ball acknowledged that he is not a placer mining specialist. The area encompassing the claim is a low gold producing one although platinum has been recovered over on Rattlesnake Creek. (Tr. 44). The mining claimant refused to disclose his discovery points to Mr. Ball. (Tr. 45). Mr. Ball took five samples from the claim along Cave Creek in 1975 and 1976. (Tr. 73, Ex. C). His sampling was done to verify a discovery. (Tr. 84). During his examinations, he found no evidence of mining nor did he see a dredge on the claim. (Tr. 97). To dredge Cave Creek would cost about $6.00 a yard. (Tr. 101). A

three inch suction dredge would cost up to $1,000. A profit would be generated if one could recover gold at $10 a yard. (Tr. 102). Although he considered the value of gold at the 1977 and 1978 prices, Mr. Ball believes there are insufficient amounts of gold on the claim. (Tr. 106).

He found no valuable minerals along the exposed bedrock on Cave Creek. (Tr. 106). He sampled five different places on the claim. Cave Creek during the fall is a foot to two feet wide. (Tr. 107). In order to use a dredge along this small creek, ponds must be constructed in order to float the dredge. The dredge must be subsequently moved, most likely two to three times a day. (Tr. 108).

Mr. James J. Malot, who has a B.S. Degree in geology from Princeton University, testified on behalf of the mining claimant. He has visited the claim and observed its geological conditions. (Tr. 116). He saw gold and platinum at different locations on the claim. (Tr. 117). The area north and east of the South Fork of the Trinity River is a crystalline region containing intrusive rocks of ultramafic and granitic composition. (Tr. 119). According to Mr. Malot, the ultramafic composition often contains platinum. There has been production of platinum from the area in the past. (Tr. 120). The geology is highly favorable to the deposit of gold in the area. (Tr. 122). Mr. Malot stated, "[w]ithout a doubt the claim is on rock that would be considered mineral in character." (Tr. 124). It was his opinion that a prudent man would be justified in pulling out any gold and platinum found in the alluvial areas in the drainage basin on the claim. (Tr. 124).

Mr. Malot did not know where the exact boundaries of the claim were. A portion of the claim is on the Trinity River. (Tr. 126). He had been on the claim four or five times to examine the geology of the claim. (Tr. 127). He took several rock samples along the river and near the cave. (Tr. 129). No assay was performed. (Tr. 130). The remaining inspections on the claim were restricted to visual observations. (Tr. 131). Mr. Malot explained his definition of "mineral" as:

> I am saying that minerals are -- mineral in character -- I would mean that there are minerals to be found other than those that are -- and including those, actually, that are contained within the rocks -- the country rock on the claim.
>
> * * * * * * *
>
> And including the country rock. In certain respects, you can say that the ultramafic rock contains many minerals. There's minerals

due to hydrothermal activity, which are different in some cases than the actual rock -- in the actual minerals in the ultramafic rock.

He stated that "black sands * * * are definitely mineral." The geologic setting was his main reason for concluding that the land is mineral in character. (Tr. 134).

Edward Szynkowski, who is an independent miner and President of Gemtrac Mines, Incorporated, was called as a witness in behalf of the mining claimant. His company is engaged in placer mining and utilizes suction dredges to recover minerals. He operates the company out of Hayfork, California. (Tr. 140). His claim is 15 miles away from the Robert Clair placer mining claim. When using a suction dredge, Mr. Szynkowski can process 25 yards of gravel a day. (Tr. 141). He had dredged on the Robert Clair claim five years ago and recovered some gold. He believed it would have been a profitable venture had not the dredge broke down. (Tr. 142). Costs of operating a three inch dredge would be 5 cents a yard excluding wages. (Tr. 143). A recovery of $5 a yard should be obtained before using a dredge. (Tr. 144).

Although Mr. Szynkowski dredged along Cave Creek and recovered some gold colors, the creek was low in water. Therefore, he ceased operations. It was difficult to carry his dredge up the creek. (Tr. 145). Even though the gravel on the Robert Clair claim is not extensive, he believes the ground is mineral in character. (Tr. 146). A workable deposit can be developed after a water storage system is built. Because of the granitic and ultramafic intrusive rocks in the area, he believes the ground is all mineral in character. (Tr. 147). Mr. Szynkowski believes a man with a reasonable amount of effort could develop the claim into a paying operation. (Tr. 148).

He stated he had claims on Hayford Creek and Rattlesnake Creek. (Tr. 149). Most of the gold he has recovered from his claims has been sold in the jewelry market. (Tr. 150). Many of his claims have no water flow except in the winter time (Tr. 153). His claims can be worked for only three or four months each year.

The engine life of a dredge is one to two years. The inner tubes that keep the dredge afloat must be replaced every year. (Tr. 155). The cost of replacing worn equipment could be $1500 for a six inch dredge while the cost for a three inch dredge is about $600. When shown photos of Cave Creek (Ex. 5, 7, and 11), he acknowledged that the creek would be difficult to dredge. He would use a three inch dredge. (Tr. 159). Most of the material dredged would be boulders. A good day's work would amount to mining two and one-half yards of gravel. (Tr. 160). At the most

there is a maximum of 2,000 yards of gravel on the claim. A suction dredge could work along the streambed for a distance of 10 feet a day. (Tr. 161). In order to sell gold for jewelry, a willing buyer must be found.

Nancy Hutchins, who has taken several college geology courses, testified she visited the claim in October, 1977. During her visits she has seen Mr. Corns dredge and recover gold from the river. (Tr. 182). After observing the potential gravel deposits along Cave Creek and the Trinity River, Ms. Hutchins believes the land is mineral in character. (Tr. 186). In her opinion a prudent man would develop the claim.

Mr. James J. Malot was recalled as a witness and testified that alluvial deposits are created when seasonal high water erodes materials and then carries it into the draining basins. Normally, whatever is upstream is washed downstream. Gravel beds are also renewed during this flooding period depending on the flow of the water. (Tr. 213). In his opinion, the gravels on the Robert Clair claim are replaced annually. (Tr. 214). He took no core samples to determine the stratigraphic sequence of gravels. He did not know whether the gravel on the claim was recently deposited.

Mr. Graham Corns, the Contestee, testified that he is from Forest Glen, California. He stated that he amended the boundaries of his claim so that it now includes the intersection of Cave Creek and the South Fork of the Trinity River. (Ex. I, Tr. 223). From a discovery point along Cave Creek, he processed 15 yards of gravel and recovered .75 ounces of gold (Tr. 232, Ex. I). He also recovered .65 ounces of gold at discovery point #3, but was unable to recall how much time he spent to recover it. (Tr. 236). He combined gravel concentrates from one and one-quarter yards of gravel from discovery points #5 and #6, which were along the Trinity River, and sent them for assay to Union Assayers. (Tr. 238, Ex. J). Before sending this concentrate in for assay, Mr. Corns removed 19 grains of gold. (Tr. 240). The assay disclosed there was .0436 ounces of gold per yard which Mr. Corns estimated to be worth $10 a yard at a gold value of $200 an ounce. (Tr. 241). Further dredging by Mr. Corns produced an average of .129 ounces of gold per yard. (Tr. 243). He estimates he has recovered 5.15 ounces of gold during a 120 hour timespan. (Tr. 244). Mr. Corns stated he made a profit over his cost in dredging. (Tr. 246). The profit was $9.80 a yard excluding labor costs and the initial cost of the dredge. (Tr. 247).

During the winter of 1977-78, Mr. Corns recovered (1/2) one-half ounce of gold from his ground sluicing operations during a 10 hour span. (Tr. 250). He has sold $500 worth of gold which amounts to over two ounces of jewelry grade nuggets. (Tr. 256).

The amended location notice (Ex. 1) was intended to include part of the South Fork of the Trinity River which was not initially within the original location notice. (Tr. 289). Mr. Corns moved on the claim in 1974. (Tr. 292).

A six inch dredge can process three times as much gravel as a three inch dredge. (Vol. II, Tr. 71). He explained that he already had a three inch dredge and therefore was reluctant to expend $2,500 to acquire a six inch dredge until he was sure his claim is valid. (Vol. II, Tr. 70). For 1979, Mr. Corns calculated the cost of mining with his dredge was $5.56 per hour. (Vol II, Tr. 79). He stated he earned a profit over the minimum wage. (Vol. II, Tr. 80). The normal dredging season along the Trinity River is from May to September. (Vol. II, Tr. 85).

Upon cross-examination, Mr. Corns stated that he had not cleaned out his sluice box when he took samples from two separate locations and had them assayed. (Vol. II, Tr. 115, Ex. W-1). The gold recovered could have come from either location. A person can normally dredge an average of four hours a day since the cold water limits the time one can stay in the stream. (Vol. II, Tr. 125). An average gold recovery is two to three penny-weights for five to six hours of work (Vol. II, Tr. 133). He operated a ground sluicing operation for two weeks in 1978. He recovered one-quarter (1/4) of an ounce of gold after processing eight yards of material. (Vol. II, Tr. 136). In the summer of 1979, he dredged 15 cubic yards of material which took 45 hours. (Vol. II, Tr. 138). Most of the time was spent moving big rocks. Only a small percentage of the time that Mr. Corns has spent on the claim has been devoted to mining. (Vol. II, Tr. 140).

In July, 1979, Mr. Corns began working as a flagman. (Vol. II, Tr. 141). The wages were $10 an hour. His income from this job exceeded what he received from mining. (Vol. II, Tr. 142). In order to save costs, Mr. Corns believes he must use the cabin on the site in conjunction with his mining activities. (Vol. II, Tr. 144). He recovered a total of 1.25 ounces of gold during 1979. (Vol. II, Tr. 151). If Mr. Corns had worked as a flagman during 1978 and 1979, he could have made more money than he did at mining. Nevertheless, he insists that he could make a profit on the claim if he mined with a six inch dredge. (Vol. II, Tr. 162). Mr. Corns has never operated a six inch dredge before. (Vol. II, Tr. 168). He can mine only three yards of gravel a day on the Robert Clair claim using a three inch dredge. (Vol. II, Tr. 183).

Mr. Wayne Simonson, a Forester with the United States Forest Service who has had experience as a draftsman, testified he prepared Exhibit 16, a sketch of the Robert Clair claim boundaries drawn according to the description in the July 25, 1978 location notice. (Ex. 1, Vol. II, Tr. 195). According to the

boundary description in the location notice, the beginning point does not meet the ending point. Therefore, the claim boundaries are not completely enclosed. (Ex. 16).

Mr. Ball was recalled to testify on October 26, 1979. He had inspected the claim three times since the previous hearing. (Tr. 1, Vol. III). He saw Mr. Corns operating a dredge and he also observed a ground sluice near the mouth of Cave Creek. (Tr. 2, Vol. III). During a visit on April 30, 1979, he took several samples inside an old adit. The samples were sent to Metallurgical Laboratories, Inc., in San Francisco, California for assay. (Ex. 18). Gold values detected were nil, .008 and .01 troy ounces per ton. These values were not commercial. (Tr. 8, Vol. III).

Mr. Ball estimated that there is 3,000 yards of gravel in the streambed on the claim. (Tr. 11, Vol. III). He reaffirmed his earlier opinion that a prudent man would not expend money and effort in developing this claim with a reasonable expectation of developing a profitable mine. (Tr. 20, Vol. III). Gold was selling for $329 an ounce at the time of the hearing. (Tr. 57, Vol. III).

Under the mining laws of the United States [30 U.S.C. section 22, et seq. (1976)], a valid location of a placer mining claim requires discovery of a valuable mineral deposit within the limits of the claim. The rule as to what constitutes a valid discovery has been stated as follows:

> * * * Where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine, the requirements of the statute have been met. [Castle v. Womble, 19 L.D. 455, 457 (1894); Chrisman v. Miller, 197 U.S. 313 (1905); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963).]

When the Government contests a mining claim, it has assumed the burden of presenting a prima facie case that the claim is invalid. When it has done so, the burden then devolves on the mining claimant to prove by a preponderance of the evidence that the claim is valid. United States v. Zwiefel, 508 F. 2d 1150, 1157, (10th Cir. 1975); United States v. Springer, 491 F. 2d 239, 242 (9th Cir.), cert. denied, 419 U.S. 234 (1974); Foster v. Seaton, 271 F. 2d 836, 838 (D.C. Cir. 1959). Where in a mining contest, a Contestee presents his own evidence,

that evidence may be weighed against him notwithstanding any defects in the Government's case. United States v. Roger and Stephanie Cichetti, 36 IBLA 124 (1978); United States v. Michael Slater, 34 IBLA 31 (1978).

Evidence of mineralization which might warrant further exploration work within a claim rather than development of a mine is not sufficient to constitute a discovery of a valuable mineral deposit. Converse v. Udall, 329 F. 2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); Henault Mining Co. v. Tysk, 419 F. 2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970). The ultimate burden of proving discovery is always upon the mining claimant. United States v. Springer, supra.

Where a Government mineral examiner testifies that he has examined a claim and found the mineral values insufficient to support a finding of discovery, a prima facie case of invalidity has been established. Government mineral examiners are not required to perform discovery work for a claimant or to explore beyond a claimant's workings. United States v. Ruth Arcand, et al., 23 IBLA 266 (1976); United States v. Becker, 33 IBLA 301 (1978). Mineral values on a claim may properly be tested by taking dry samples and washing them down to concentrate. Government mineral examiners are not required to duplicate the mining claimant's proposed extraction operation in order to show that it would not be productive. It is not necessary to set up a dredge in order to sample the mineral values. See United States v. Russ Knecht, 39 IBLA 8, 11 (1979).

Returns which are so meager that they will not attract the labor and means of a person of ordinary prudence are not sufficient to demonstrate discovery of a valuable mineral deposit. United States v. Ruth Arcand, et al., supra; United States v. Frank and Wanita Melluzzo, 38 IBLA 214 (1978).

The Government, by the testimony of its expert witness, has established, prima facie, that there are no mineral deposits presently exposed on the claims which would justify a person of ordinary prudence in the further expenditure of his labor and means in the development of the subject claim. Mr. Ball examined and took samples from the areas on the claim that he believed revealed the most promising mineral deposits. He found only negligible amounts of gold. He found insufficient amounts of gravel within the streambeds to justify further development.

The mining claimant has failed to show by a preponderance of the evidence that there is a valid discovery on the Robert Clair claim. He has failed to submit representative samples from his claim. Although he may have recovered some gold in the past, he has not demonstrated that he has been able to recoup his labor costs and his initial investment for his dredge or the

costs to operate it. He conceded that he could remove only three to four yards of gravel a day. Since he has failed to document and account for the volumes of material processed and concentrated to recover his gold, I find those gold recoveries not representative of any mineral deposit exposed on the claim. United States v. Kingdon, 36 IBLA 11 (1978); United States v. Ramsher Mining and Engineering Co., Inc., 13 IBLA 268 (1973). Mr. Malot's position that gold values are renewed significantly on the claim by periodic flooding of upstream material is not convincing. Such an argument has been recently rejected by the Board of Land Appeals. See United States v. Edward T. McHenry, 43 IBLA 122, 126 (1979).

It is concluded that there has been no discovery of a valuable mineral deposit within the limits of the subject claim.

Since the foregoing conclusion is dispositive of this proceeding, it is unnecessary to rule on the remaining issues set forth in the Complaint.

Accordingly, the Robert Clair placer mining claim is hereby declared null and void.

R. M. Steiner
Administrative Law Judge

Enclosures:
1. Information Pertaining to Appeals Procedures.
2. Copy of 43 CFR section 4.413 dated January 16, 1980.

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